



ALAN WILSON
ATTORNEY GENERAL

February 27, 2013

Sammy G. Diamaduros, Esquire
Union County Attorney
P. O. Box 643
Union, South Carolina 29379

Dear Mr. Diamaduros:

Attorney General Alan Wilson has referred your letter of January 9, 2013 to the Opinions section for a response. The following is our understanding of your questions presented and the opinion of this Office concerning the issues based on that understanding.

Issues presented in your letter:

- 1) Is the Union County supervisor considered an elected official per S.C. Code § 4-9-30(7) and generally speaking?
- 2) Does the supervisor fall under the scope of the county's personnel policy?
- 3) Is the county council authorized to hire and fire a county employee?
- 4) Is the county council authorized to reinstate an employee fired by the supervisor?
- 5) If the county council does have the authority to fire a county employee or have an employee reinstated that is fired by the supervisor, what type of majority would county council have to have to do so?

Answers:

- 1) Yes, a supervisor in a council-supervisor form of government under S.C. Code § 4-9-20(b) (1976 Code, as amended) is an elected official based on S.C. Code § 4-9-410 both generally speaking and for purposes of S.C. Code § 4-9-30(7) (see Answer 2 below).
- 2) No, as an elected official the supervisor does not fall under the authority of personnel policies and procedures for county employees. S.C. Code § 4-9-30(7) gives county councils power "to develop personnel system policies and procedures for county employees by which all county employees are regulated except those elected directly by the people..." S.C. Code § 4-9-410 says regarding a council-supervisor form of county government:

"...The supervisor shall be a qualified elector of the county, elected at large from the county in the general election for a term or two or four years."

This Office previously answered this question for Union County in a prior opinion, which the applicable information is quoted below:

“Clearly the supervisor is directly elected by the people and thus is not to be regulated by the county’s personnel system policies and procedures. Where, as here, the terms of a statute [4-9-410] are unambiguous, such terms must be applied according to their literal meaning. State v. Salmon, 279 S.C. 344, 306 S.E.2d 620 (1983). In the event of a conflict between state laws and local ordinances, state laws will prevail. Law v. City of Spartanburg, 148 S.C. 229, 146 S.E. 12 (1928). Thus, we must conclude that personal ordinances of Union County would not be applicable to the county supervisor, who is directly elected by the people of Union County.”

Op. S.C. Atty. Gen., 1987 WL 245436 (March 31, 1987).

- 3) Under a county-supervisor form of government, a court in South Carolina is likely to find a county council may not hire a county employee, but the county council would have the ability to create a position and to fund it. County council may fire a county employee with two-thirds of the council members present and voting. South Carolina Code § 4-9-430 says:

“The council shall not remove any county administrative officers or employees whom the county supervisor or any of his subordinates are empowered to appoint, unless by two-thirds vote of the members present and voting. Except for the purposes of inquiries and official investigations, neither the council nor its members shall give direct orders to any county officer or employee, either publicly or privately...”

In regards to the duties of a supervisor in a council-supervisor form of government, S.C. Code § 4-9-420(12) says:

“[The powers and duties of the supervisor shall include, but not be limited to, the following: ...] to be responsible for employment and discharge of personnel subject to the provisions of subsection (7) of § 4-9-30 and subject to the appropriation of funds by the council for that purpose.”

The Supreme Court in South Carolina has previously answered this question concerning a controversy between a supervisor and a county council concerning who had the right to hire and fire the county attorney. Poore v. Gerrard, 271 S.C. 1, 244 S.E.2d 510 (1978). In that case the Supreme Court held concerning S.C. Code § 4-9-430 “under [S.C. Code §] 4-9-30(7) county council has the duty and responsibility to provide for personnel to operate the county functions over which it is granted control and to appropriate funds for the employment of such personnel. Section 4-9-420(12), dealing specifically with the county supervisor form of government, makes the county supervisor ‘responsible for the employment and discharge of personnel subject to the provisions of subsection 7 of Section 4-9-30’ and for which council has appropriated funds, i.e., county council is empowered to create and fund positions for the operation of county government, but personnel to fill such positions shall be appointed by the county supervisor. This conclusion is reinforced by further provisions of Section 4-9-430... such power to employee personnel [under S.C. Code § 4-9-420(12)] is limited, first, by the existence of a position to fill

and, second, by the appropriation of funds with which to pay the employee.” Id. The supervisor has the power to hire and fire county personnel coming within the jurisdiction of the county council, but that power is limited by county council creating a position and funding such a position. Id.

- 4) Refer to Answer 3.
- 5) Refer to Answer 3 for an explanation on the right to hire and fire. A two-thirds majority on a council of six members is four members who must be present and must vote to remove any county administrative officers or employees under S.C. Code § 4-9-430. However, even if less than six members are present, then it still must be two-thirds of the members present and voting, according to the statute. See S.C. Code § 4-9-430.

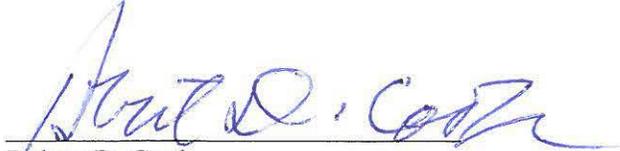
Conclusion: This office is only issuing a legal opinion. Until a court or the legislature specifically addresses the issues presented in your letter, this is only an opinion on how this Office believes a court would interpret the law in the matter. If it is later determined otherwise or if you have any additional questions or issues, please let me know.

Sincerely,



Anita Smith Fair
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Deputy Attorney General